

# **EXHIBIT 3**

## **Declaration of Justin Zimmerman**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION**

STATE OF KANSAS, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-150-DMT-CRH  
Judge Daniel M. Traynor

**DECLARATION OF JUSTIN ZIMMERMAN**

I, Justin Zimmerman, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am Commissioner of the New Jersey Department of Banking and Insurance (“the Department”).
2. I submit this Declaration in support of the Final Rule, 89 Fed. Reg. 39,392, issued by the U.S. Department of Health and Human Services and Center for Medicare and Medicaid Services permitting Deferred Action Childhood Arrivals (“DACA”) recipients to enroll in a qualifying health plan through an exchange pursuant to the Patient Protection and Affordable Care Act (“ACA”). I have compiled the information in the statements set forth below through personal knowledge, Department personnel who have assisted me in gathering information, and on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Final Rule in order to understand its immediate impact on the Department. The Final Rule benefits the State and New Jersey residents.

3. By establishing that DACA recipients are eligible for subsidies on the official state health insurance marketplace, the Final Rule ensures that more New Jersey residents will have access to quality affordable health insurance coverage. The Department established and operates Get Covered New Jersey the State's Official Health Insurance Marketplace and, as laid out in this declaration, can explain how increased access to quality affordable health insurance benefits both the State and its residents.
4. By contrast, as laid out in this declaration, a decision from a court invalidating the Final Rule on a nationwide basis would impose a series of other harms on the State of New Jersey, from residents losing coverage, to the loss of revenue tied to the payment of the exchange user fee.

The New Jersey Department of Banking and Insurance

5. Among other functions, the Department operates Get Covered New Jersey ("GetCoveredNJ"), the State's official health insurance marketplace under P.L.2019, c.141 and the ACA, 42 U.S.C. § 180001 et seq., which includes, among other things, operating a technology platform and consumer assistance center consistent with the requirements of State and Federal law.

GetCoveredNJ

6. GetCoveredNJ, New Jersey's ACA exchange, was established under P.L.2019, c. 141 (codified at N.J.S.A. 17B:27A-57 to -59). GetCoveredNJ is a source of quality affordable health insurance for New Jersey residents who do not have health coverage from their employers or access to other health care programs. Financial assistance to lower the cost of premiums and out-of-pocket expenses is available for eligible residents.
7. GetCoveredNJ provides access to high-quality, affordable health coverage for New Jersey residents. GetCoveredNJ is where individuals and families who do not have health insurance through an employer or other program, such as Medicaid or Medicare, can easily shop for and

buy quality, affordable health insurance. Hundreds of thousands of New Jersey residents have signed up for health insurance through GetCoveredNJ. During the 2024 Open Enrollment Period, plan selections increased over 61% since the Murphy Administration took over the marketplace's operations from the federal government in 2020.

8. Over 480,000 New Jersey residents have signed up for a 2025 health insurance plan through GetCoveredNJ in the first nine weeks of the state's open enrollment period. This is an increase from the 366,986 residents who had selected plans by this time last year. At the end of the last Open Enrollment Period on January 31, 2024, a total of 397,942 consumers overall had signed up for 2024 health coverage with Get Covered New Jersey.
9. Health plans offered through GetCoveredNJ cover preventative services, emergency services, prescription drugs, prenatal and pediatric care, as well as other services. No one can be denied coverage due to a pre-existing condition.
10. Financial assistance under GetCoveredNJ takes several forms: federal advance premium tax credits, cost-sharing reductions, and New Jersey Health Plan Savings offered under N.J.S.A.17B:27A-67 (a state subsidy). Premium tax credits and the state subsidy help lower monthly premium payments. Cost-sharing reductions help lower out-of-pocket costs like deductibles and co-pays for doctor visits.
11. The American Rescue Plan Act of 2021 and the Inflation Reduction Act of 2022 allowed more people to qualify for more financial help. Previously, premium tax credits were only available up to certain income levels. As a result of the federal savings available, no one pays more than 8.5 percent of their income for health insurance (for a benchmark plan) through Get Covered New Jersey. Consumers with annual incomes up to 600% of the federal poverty level are also eligible for state subsidies, known as New Jersey Health Plan Savings. An individual with an

income of up to \$90,360 and a family of four who makes up to \$187,200 can receive state subsidies to lower the costs of health coverage.

12. To be eligible for GetCoveredNJ, under 45 C.F.R. § 155.305, New Jersey residents:

- a. Must live in the United States and have a primary residence in New Jersey;
- b. Must be considered a resident of the United States and New Jersey for tax purposes;
- c. Must be a United States citizen or national or be lawfully present; and
- d. Cannot be currently incarcerated.

13. Prior to the Final Rule, DACA recipients were excluded from the definition of “lawfully present” for purposes of Exchange eligibility under federal rules. Under this Final Rule, DACA recipients are no longer excluded from the definition of “lawfully present” and are therefore eligible for coverage through GetCoveredNJ.

State Revenue Derived from Insurance Purchased Through GetCoveredNJ

14. To fund its operations, pursuant to N.J.S.A.17B:27A-57, GetCoveredNJ collects a 3.5% user fee on “the total monthly premium collected by a [health insurance] carrier for each health benefits plan” sold in the individual market.

15. Because health insurance carriers receive a monthly premium payment for each individual enrolled in their insurance plans, the total monthly premium collected by a health insurance carrier decreases as the number of enrollees decreases. And the total user fee collected by New Jersey correspondingly decreases as the number of enrollees decreases.

16. Thus, for each individual who ceases to be enrolled in a health benefits plan in New Jersey, including plans sold on GetCoveredNJ, the State loses user fee revenue.

17. As of January 9, 2024, it is estimated that over 225 DACA recipients have enrolled in a plan offered on GetCoveredNJ.

18. Nine in 10 individuals enrolling in GetCoveredNJ qualify for financial help that reduce the costs of their monthly premium. Record levels of financial help through federal tax credits and state subsidies are available for New Jersey residents. Many consumers can find a plan for \$10 a month or less. Indeed, 91% of individuals who purchase insurance on GetCoveredNJ receive state or federal subsidies. Thus, for many enrollees, losing access to GetCoveredNJ means not being able to afford private health insurance at all.
19. If a court issues an order rendering those DACA recipients who have enrolled in plans offered on GetCoveredNJ now ineligible for participation in ACA exchanges, the State would lose revenue based on insurance premiums under those plans no longer being collected, and thus carriers no longer being assessed a 3.5% user fee based on those premiums.
20. Using the average 2025 projected premium in the individual market and the estimated DACA population enrolled in 2025 plans, the projected loss of exchange user fees if these enrollees were excluded from the market is estimated to be \$68,584 for 2025.

Impact of Final Rule on New Jersey

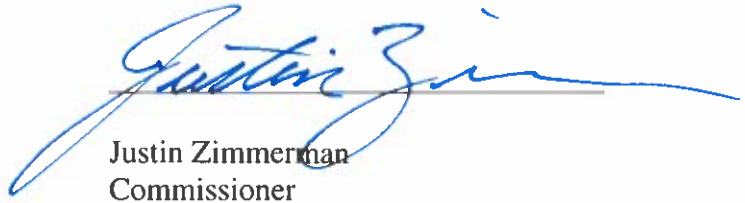
21. The Final Rule allows more New Jersey residents to access the state exchange, reducing the numbers of uninsured individuals in the State.
22. Beyond improving health outcomes, increased access to health insurance also results in financial benefits for DACA recipients. Access to quality affordable health care results in lower-cost preventative care and a decrease in high-cost emergency care, reducing the financial strain of costly medical bills.

Compliance Costs Related to the Final Rule

23. Many GetCoveredNJ operations, as well as health insurance carrier operations, have been modified to accommodate the Final Rule on DACA recipients.
24. The GetCoveredNJ website has been updated to explain that coverage for DACA recipients is available under the Final Rule. The technology platform system logic has been altered to handle any DACA immigration responses appropriately and manage referrals from Medicaid. The Department has trained consumer assistance center staff, coordinated with carriers, assisters, brokers and navigators to ensure awareness of the Final Rule and accurate communication with consumers.
25. The total costs incurred to ensure GetCoveredNJ's compliance with the Final Rule are approximately \$28,800 for technical implementation and \$4,400 dollars in marketing costs.
26. Invalidating the Final Rule will not only require the Department to reverse system changes to GetCoveredNJ, but will also require close coordination with consumer assistance center staff, carriers, assisters, and brokers, and navigators.
27. The total estimated costs that the Department would incur if the Final Rule were invalidated are approximately \$9,900.
28. Invalidating the Final Rule would also cause confusion and uncertainty in the insurance marketplace. To the extent that DACA recipients have scheduled medical appointments with network providers, these appointments may need to be cancelled or modified due to lack of insurance coverage.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 14<sup>th</sup> day of January, 2025, in Mercer County.



Justin Zimmerman  
Commissioner  
New Jersey Department of Banking and Insurance